

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ADRIAN BAILEY,

Plaintiff,

v.

ORDER
03-CV-749A

WALGREEN CO., et al.,

Defendants.

This case was referred to Magistrate Judge Hugh B. Scott, pursuant to 28 U.S.C. § 636(b)(1). On June 29, 2005, defendants Walgreen Company and Walgreen Eastern Company ("Walgreen defendants") filed a motion for summary judgment. On August 10, 2005, defendants City of Buffalo, J. Patterson, Doe I, and Marlene Mott ("City defendants"), filed a motion for summary judgment. On August 23, 2005 plaintiff filed a cross-motion for summary judgment. On October 3, 2005, Magistrate Judge Scott filed a Report and Recommendation, recommending that the defendants' respective motions for summary judgment be granted in part and denied in part, and that plaintiff's motion for summary judgment be denied in its entirety.

Both the Walgreen defendants and the City defendants filed objections to the Report and Recommendation. Thereafter, the Walgreen defendants notified the Court that they had settled the case. Oral argument on the objections filed by

the City defendants was held on December 8, 2005, but counsel for the City defendants failed to timely appear.¹

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Scott's Report and Recommendation, the City defendants' motion for summary judgment is granted in part and denied in part and plaintiff's motion for summary judgment is denied.

The parties shall appear on February 17, 2006 at 9:00 a.m.
for a meeting to set a trial date.

¹ Initially, the Court stated that, as a result of defense counsel's failure to appear, it would consider the objections withdrawn. The Court was later advised that counsel for the City defendants arrived late, after the matter had concluded. Defense counsel thereafter notified the Court that she did not intend to withdraw the objections. As a result, the Court has considered the written objections filed by defense counsel, but has determined that a rescheduling of oral argument is unnecessary.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: January 20, 2006